

1 MR. SCHONMAN: But again, I would  
2 stress that we're talking about police  
3 records, rap sheets, and other things. of  
4 which Mr. Titus probably had at one time. He  
5 no longer has. We understand that. But  
6 they're not going to be anything that I  
7 believe would be of a surprise nature to Mr.  
8 Titus.

9 ADMIN. JUDGE SIPPEL: Well, could  
10 you describe them? Not here in the court, but  
11 could you just describe them to Mr. Marshall  
12 in a phone call? And again, I mean, I'm  
13 talking about going parallel with your  
14 paperwork, which is very responsible. And I  
15 like that.

16 In other words, ultimately he's  
17 not going to get the documents until you get  
18 a firm commitment on the protective order.  
19 But I didn't understand that you had an  
20 obligation to the police for that, but that's  
21 certainly understandable. And at the same  
22 time, you'd be generally describing to him

1       what it's all about.

2               Is your witness, Mr. Marshall --  
3       before I go off of this -- is your client  
4       unable to give you any idea at all as to  
5       what's in these documents?

6               MR. MARSHALL: Well, he knows that  
7       he's been convicted. And he has, I'm sure,  
8       some memory of things that he read in 1993.  
9       But that was 14 years ago. He was a teenager  
10      then. He's a man in his thirties now.

11              So, we can get some information  
12      from him about that. Yes. But I think that  
13      we ought to be able to see the evidence  
14      ourselves.

15              ADMIN. JUDGE SIPPEL: No, I agree.  
16      Ultimately, you're going to get to see them.

17              But is there a way of moving this  
18      along? I mean, I would almost think that a  
19      letter agreement signed by both parties that  
20      these things are going to be used only for  
21      purposes of this case would be sufficient.

22              MR. MARSHALL: Your Honor, I don't

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1 see any problem reaching a protective order.  
2 And the last person who wants to spread around  
3 the evidence that he has committed sexual  
4 misconduct is David Titus himself. He has no  
5 interest in having this go any wider than it  
6 needs to for purposes of this litigation.

7 And I can give you my assurance  
8 right now that we will not use these  
9 documents. I will not permit him to use these  
10 documents for any purpose other than the  
11 conduct of this litigation.

12 If for example, if he needs an  
13 expert witness, we will notify the expert  
14 witness that he cannot further distribute the  
15 documents. He has to either destroy them or  
16 return them --

17 ADMIN. JUDGE SIPPEL: He's going  
18 to have to sign the protective order also.  
19 And then anything else, any add-ons about  
20 destruction.

21 MR. MARSHALL: I'm sure there will  
22 be no delay or any debate of any consequence

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1 over the content of the protective order.

2 The main limitation ---

3 ADMIN. JUDGE SIPPEL: You have it,  
4 don't you? As I understand it, I was just  
5 handed a copy by Mr. Knowles-Kellett -- the  
6 protective order.

7 MR. MARSHALL: Your Honor,  
8 remember please that this hearing was moved  
9 because I'm in the Pittsburgh area right now  
10 visiting an elderly aunt at a retirement  
11 center. This retirement center does not have  
12 a wireless connection to the internet. So  
13 I've not seen any e-mail or anything on the  
14 internet since I left Seattle.

15 ADMIN. JUDGE SIPPEL: Well,  
16 apparently it's in the mix. Go ahead, Mr.  
17 Knowles-Kellett.

18 MR. KNOWLES-KELLETT: Your Honor,  
19 our big objection was just to the 24-hour  
20 deadline that you were setting. I think it's  
21 going to -- we have no reason to believe that  
22 Mr. Marshall's going to have serious problems

1 with this protective order.

2 We drafted it based on the  
3 Commission's model protective order. I think  
4 that we just need a few more days to resolve  
5 this.

6 MR. MARSHALL: And Your Honor, let  
7 me point out that I see no reason for them not  
8 to have a few days, because I won't be back in  
9 Seattle until next Wednesday. I think today  
10 is Wednesday. Correct? So that would be a  
11 week from today I'll be back.

12 So whether they get it to Seattle  
13 tomorrow or next Tuesday really makes no  
14 difference to me.

15 ADMIN. JUDGE SIPPEL: All right.

16 MR. SCHONMAN: What we would  
17 anticipate doing once we reach agreement on  
18 the language in the protective order, in the  
19 draft protective order, is to file it, along  
20 with a joint request for adoption requesting  
21 Your Honor to adopt this protective order for  
22 the purposes of this hearing so that we can

1 provide the documents to Mr. Titus and protect  
2 the interests of the individuals who have  
3 given the documents to us.

4 And also as Mr. Marshall said,  
5 this protective order would protect the  
6 interests of his client, who doesn't want his  
7 character unnecessarily disparaged.

8 ADMIN. JUDGE SIPPEL: All right.  
9 I just want to caution that all of these very  
10 tight protective order restrictions are  
11 certainly going to be followed all the way up  
12 through discovery, including the use of any  
13 expert or anybody that's assisting you in the  
14 case.

15 But once we go to hearing and  
16 we're on the record, first of all, there's  
17 going to be testimony with respect to the  
18 sensitive things are going to be testified to.  
19 And it may appear some of these documents may  
20 just become necessary to put on the public  
21 record. I mean, I've got the discretion to do  
22 that.

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1 MR. SCHONMAN: Or Your Honor,  
2 another alternative could be to close part of  
3 the hearing to the public --

4 ADMIN. JUDGE SIPPEL: Well, again--

5 MR. SCHONMAN: -- and receive  
6 information under seal.

7 ADMIN. JUDGE SIPPEL: I understand  
8 that. But I'm not convinced that that's going  
9 to be necessary to do.

10 As they say, if we were talking  
11 about information on Osama bin Laden or  
12 something like that, but I understand that  
13 this is very sensitive stuff for Mr. Titus.  
14 I understand. I'm very sensitive to that  
15 myself.

16 But on the other hand, hearings in  
17 the APA are supposed to be on the record in  
18 full view of the public unless there's good  
19 reason not to. And I'm sure that there may be  
20 some of this evidence that clearly -- clearly  
21 should be under seal. But until I see it, and  
22 until I see how this case is going, I just

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1 can't make a decision. I'm just cautioning.

2 Look, if Mr. Titus wants this  
3 license so bad, he's going to run the risk of  
4 some of this stuff coming out in the public  
5 record. Whoever is going to hear about that,  
6 I don't know.

7 MR. MARSHALL: Well, you're right,  
8 Your Honor. He does want the license badly.  
9 And I'm sure he's willing to run that risk in  
10 order to protect his license.

11 ADMIN. JUDGE SIPPEL: Okay. Well,  
12 somehow there should be a provision like that  
13 in the protective order, because I'm not going  
14 to be bound by an ironclad protective order  
15 all the way through the hearing. I certainly  
16 will be bound by it up to the time that we  
17 open the hearing, and Mr. Titus takes the  
18 stand. Up until that point, they'll be fully,  
19 fully protected. I can assure you that.

20 Now, having said all of that, why  
21 don't we do this? Why don't we give you ten  
22 days from the time you receive this protective

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1 order and execute it, get it back to the  
2 Bureau, why don't we give you ten days?

3 Because once you sign the  
4 protective order, they should be in a position  
5 to fax you, somehow or other, air courier it  
6 to you. But ten days from the date that you  
7 receive the materials, you have to come and  
8 report to me as to whether or not you want an  
9 expert, and make a proffer that your client is  
10 prepared to do bing, bing, bing and bing,  
11 including his financial disclosures, tax  
12 return -- showing that he can't afford to  
13 have, and what the witness is going to charge,  
14 or at least a ball park estimate of what the  
15 witness is going to charge. Give me all the  
16 information that I need to make a decision as  
17 to whether or not that expert's going to have  
18 to come here and testify in open court.

19 MR. SCHONMAN: It will be ten days  
20 from the date that you release an order  
21 granting the joint request for adoption of the  
22 protective order?

1                   ADMIN. JUDGE SIPPEL: No -- well,  
2 I guess ten days from the date that he  
3 receives the documents.

4                   MR. SCHONMAN: Okay.

5                   ADMIN. JUDGE SIPPEL: That's the  
6 trigger date for him. He's got to have the  
7 documents in hand before he can -- and the  
8 protective order, however, will be signed so  
9 that you're going to sit down with a  
10 prospective expert, and you have to explain to  
11 him or show him what's in some of that stuff.  
12 And, you know, he may not buy on to the case.  
13 You may go through some of this with him, and  
14 he's not buying onto the case.

15                   So I would not want these things  
16 -- any of this turned over to the expert until  
17 you actually had him signed on as your  
18 witness. But you obviously are going to have  
19 to show him, or somehow or other communicate  
20 to him what the case is about.

21                   MR. SCHONMAN: Your Honor, I would  
22 hope that at the time that Mr. Marshall makes

1 his decision about whether or not to call an  
2 expert witness and also identifies the person  
3 so we can notice that individual for  
4 deposition, that he also informs us of any  
5 other individuals on whom he intends to rely  
6 so that we can notice those individuals, if we  
7 so desire.

8 ADMIN. JUDGE SIPPEL: Well, let me  
9 get finished with the expert first and the  
10 delivery of the documents. We're all clear on  
11 that.

12 So you should have these documents  
13 within a week to say the most. Is that  
14 correct? Am I correct on that?

15 MR. KNOWLES-KELLETT: I think we  
16 read Mr. Marshall feedback as the main thing.

17 ADMIN. JUDGE SIPPEL: No, I  
18 understand that. But you will have the  
19 documentation to him, to his office, so that  
20 he would be in a position to --

21 MR. SCHONMAN: Your Honor, we can  
22 scan them in and e-mail them to him, and he'll

1 have them --

2 MR. KNOWLES-KELLETT: Instantly.

3 ADMIN. JUDGE SIPPEL: When are you  
4 going to be back from Pittsburgh?

5 MR. MARSHALL: I'll be back next  
6 Wednesday, Your Honor, a week from today.

7 ADMIN. JUDGE SIPPEL: So you're  
8 out of commission until Wednesday.

9 Is there any office or any place  
10 in Pittsburgh that you could pick up these  
11 things? Do they come in on the Internet to  
12 somebody -- not the documents now, but at  
13 least the protective order?

14 MR. MARSHALL: I think I could  
15 receive them by fax if they could be faxed to  
16 me today.

17 MR. SCHONMAN: Sure.

18 MR. KNOWLES-KELLETT: Call Mr.  
19 Schonman and give him a fax number.

20 MR. MARSHALL: Okay. I'm afraid  
21 I'm traveling without a lot of my information.  
22 It's at my office, and one of them is Mr.

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1 Schonman's number. Could I have that, please?

2 MR. SCHONMAN: 202-418-1795.

3 MR. MARSHALL: 1795. I have it.

4 Thank you.

5 MR. KNOWLES-KELLETT: I'll fax  
6 them to you quickly.

7 MR. MARSHALL: Okay.

8 ADMIN. JUDGE SIPPEL: You don't  
9 have a fax number now, do you?

10 MR. MARSHALL: I'm afraid I don't  
11 have it.

12 ADMIN. JUDGE SIPPEL: Okay. But  
13 you will have it before the end of the day?  
14 You'll have it --

15 MR. MARSHALL: I'll have it within  
16 ten minutes of our ending this call.

17 ADMIN. JUDGE SIPPEL: Okay. Well,  
18 okay. Well, let's move then.

19 I'm not going to get copied with  
20 this, what you're exchanging, the protective  
21 order, right now. I'm not going to get copied  
22 with that until it's signed? I just wanted to

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1 be sure that nobody's put to the burden of  
2 sending me copies I don't need.

3 MR. MARSHALL: Right.

4 ADMIN. JUDGE SIPPEL: You've got  
5 --

6 MR. MARSHALL: Your Honor --

7 ADMIN. JUDGE SIPPEL: Go ahead.

8 MR. MARSHALL: Let me address one  
9 thing that you said about the content of the  
10 protective order.

11 You said I might show the  
12 documents to an expert who would not sign on  
13 to the case, and therefore I shouldn't provide  
14 him or her a copy of the documents until he or  
15 she signs on to the case.

16 Let me suggest a different  
17 procedure because that is very expensive. The  
18 procedure as you laid it out means that Mr.  
19 Titus is essentially incurring attorney's fees  
20 while his attorney sits in the office of an  
21 expert, and the expert reads documents. So  
22 that's going to add up quickly.

1           What I would suggest is any expert  
2 who agreed even to consider signing on to the  
3 case, as you put it, should be authorized to  
4 receive a copy under the protective order.  
5 The expert can sign the protective order  
6 without having agreed to do anything else.

7           I've been involved in cases where  
8 an expert signed a protective order, and that  
9 copy of the protective order is filed under  
10 seal so that the opposing counsel doesn't know  
11 whether that particular expert -- if that  
12 particular expert is never called as a  
13 witness, never signs on to the case, the  
14 opposing counsel never even needs to know  
15 that.

16           Do you follow what I'm saying?

17           ADMIN. JUDGE SIPPEL:    Yes.    I  
18 follow what you're saying.    Let me ask  
19 counsel.

20           MR. SCHONMAN:  Your Honor, I think  
21 the draft protective order, as it's currently  
22 written, or as we might modify it, could

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1 certainly take into account counsel's ability  
2 to show sensitive -- I should say confidential  
3 documents to another potential witness, as  
4 long as that potential witness understands  
5 that the information that he's being shown is  
6 of a confidential nature. And if that person  
7 doesn't sign on to be a witness on behalf of  
8 Mr. Titus, that the information doesn't go any  
9 further.

10 ADMIN. JUDGE SIPPEL: Well, I  
11 think that but mechanically Mr. Marshall's  
12 talking about something different than I was  
13 talking about.

14 See, he doesn't want to incur the  
15 legal fees of having to go over to an expert,  
16 potential expert's office, sit down and go  
17 over the documents with him. He wants to, I  
18 take it what you're saying is you want to send  
19 him or her the documents. Is that right?

20 MR. MARSHALL: That is exactly  
21 right, Your Honor.

22 ADMIN. JUDGE SIPPEL: Say, look

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1 these over. Here's what we want to do, what  
2 can you do? And what would your fee be? This  
3 can all be done. Do you understand what I'm  
4 saying?

5 MR. SCHONMAN: Yes. Perhaps he  
6 could just send a copy of the protective order  
7 and a declaration to the potential witness.  
8 Have him sign it. And then once it's signed,  
9 send him the documents.

10 ADMIN. JUDGE SIPPEL: Okay. All  
11 right. We're in agreement with that.

12 MR. MARSHALL: Yes, but --

13 ADMIN. JUDGE SIPPEL: You're  
14 pointing out something to me I hadn't  
15 considered. That's fair.

16 All right. Now, okay. So now  
17 what are we talking about? We're talking  
18 about you getting back to the office next  
19 Wednesday. Next Wednesday, according to my  
20 calendar, is going to be the 26th. Correct?

21 MR. MARSHALL: Yes.

22 ADMIN. JUDGE SIPPEL: Okay. So I

1 give you ten days from the 26th to go back and  
2 advise myself and counsel that you're  
3 committed to going forward with an expert.

4 In between that time, you're  
5 certainly going to get the agreement -- the  
6 protective order's going to be signed off on.  
7 And you probably won't see the documents -- do  
8 you want to get the documents before the 26th?  
9 Can Mr. Schonman rely on just sending you the  
10 documents on the 26th, assuming all the  
11 paperwork is done?

12 MR. MARSHALL: Well, I'm just  
13 wondering whether -- I think the 26th is fine.  
14 I don't think it's -- I can't offer Mr.  
15 Schonman any assurance that I'm going to be  
16 any place where he can get them to me before  
17 the 26th.

18 ADMIN. JUDGE SIPPEL: Okay. So  
19 the 26th, the documents are going to be  
20 delivered, of course, subject to the execution  
21 of a protective order by you. Okay.

22 I take it that would be his

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1 signature. That's all that's necessary. We  
2 don't have to get Mr. Titus' signature on  
3 that. And Mr. Schonman is nodding yes.

4 So that can be done  
5 electronically. September 26th, the Bureau  
6 counsel will fax to you copies of these  
7 documents. And if they're going to be marked  
8 as confidential, I would require them to be  
9 marked confidential for discovery purposes.  
10 And then we can make a determination of  
11 hearing, or maybe if we have an admission  
12 session, as to whether we're going to also  
13 include them as protective for hearing  
14 purposes.

15 MR. KNOWLES-KELLETT: The way it's  
16 currently drafted, Your Honor, they're marked  
17 confidential information by the people  
18 providing them.

19 ADMIN. JUDGE SIPPEL: I see.

20 MR. KNOWLES-KELLETT: And then you  
21 have the power to sua sponte have the power  
22 to decide that they shouldn't be confidential.

1 ADMIN. JUDGE SIPPEL: Yes. At  
2 hearing. At hearing. Not another time. Yes.

3 But that should be in the  
4 protective order somehow.

5 MR. KNOWLES-KELLETT: That's how  
6 it's written in the model protective order,  
7 and that's how we drafted it.

8 ADMIN. JUDGE SIPPEL: Excellent.  
9 Okay. Because I've seen some that have been  
10 a little bit limp on that.

11 That's all right. Now let me not  
12 detract from this. We're doing fine.

13 So 26 September, you get the  
14 documents. Ten days from that is one, two,  
15 three, four, five, six, seven, eight, nine --  
16 that would be the 8th. That's Columbus Day.  
17 That's a holiday. Yes. You get a benefit on  
18 that one, Mr. Marshall.

19 Tuesday, the ninth. 9 October.  
20 Okay? You get to me, at least by e-mail. You  
21 make a representation that your client is  
22 committed to employing an expert witness. In

1 other words, that you have a witness that  
2 you're going to sign on to the case and that  
3 Mr. Titus is prepared to pay his fee. And  
4 that if you're going to make a request, I  
5 guess it would be in the nature of a  
6 protective order or something like that, that  
7 motion for extraordinary relief or something  
8 that his testimony be taken by way of  
9 deposition only, on the conditions that you've  
10 outlined.

11 Then that would also be stated in  
12 your statement. You don't have to lay it out,  
13 but just say that we're going to request that  
14 you rule on having his deposition testimony  
15 serve as hearing testimony. And I would just  
16 reserve on it.

17 But let's get it to that stage  
18 anyway. Because right now we are so  
19 indefinite about it, and you're going to have  
20 to talk -- obviously you're going to have to  
21 talk turkey with your client. Let's see where  
22 we come out on 9 October.

1 MR. SCHONMAN: Your Honor, in  
2 addition to disclosing whether he intends to  
3 use an expert witness, would he on October 9th  
4 also be required to identify the individual?  
5 And also what they intend to say, what they  
6 would be used for?

7 MR. MARSHALL: We may not know  
8 those things, Your Honor. I mean, I'm sure  
9 I'd have some idea whether the expert I was  
10 proposing to use intended to say, but --

11 ADMIN. JUDGE SIPPEL: I'll give  
12 you another date for that. No, I'll give you  
13 another date for that. That's going to  
14 happen. It's going to happen soon, but it's  
15 not going to happen on the 9th. I won't put  
16 you to the test on the 9th of October.

17 You've got a lot of work to do  
18 between 26 September and 9 October to do just  
19 what I'm instructing you to do. And then  
20 we'll set times after that.

21 Well, I don't know what you want  
22 to go into. You're obviously going to have to

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1 work out a different date for a deposition  
2 schedule. I'm sorry, Mr. Schonman, but --

3 MR. SCHONMAN: Understood.

4 ADMIN. JUDGE SIPPEL: And you're  
5 going to have to do that after the first of  
6 the next fiscal year.

7 MR. SCHONMAN: We're not going  
8 out--

9 ADMIN. JUDGE SIPPEL: Which is  
10 sort of an unknown.

11 MR. SCHONMAN: I think it's safe  
12 to say that we're going to not travel to  
13 Seattle next week for Mr. Titus' deposition,  
14 given what has happened this morning.

15 ADMIN. JUDGE SIPPEL: Yes.

16 MR. SCHONMAN: And so we would let  
17 Mr. Marshall know at this time that we're  
18 relieving Mr. Titus of the deposition that  
19 we've noticed him for. And that's for next  
20 Thursday.

21 ADMIN. JUDGE SIPPEL: Okay. Well,  
22 can you communicate that to Mr. Titus?

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1 MR. MARSHALL: I will, Your Honor.  
2 And I appreciate Mr. Schonman's making that  
3 this morning.

4 MR. SCHONMAN: To be taken at  
5 another time, of course.

6 ADMIN. JUDGE SIPPEL: Yes. To be  
7 taken at another time. Oh, yes.

8 MR. MARSHALL: Of course.

9 MR. KNOWLES-KELLETT: We  
10 anticipate that the funding will be up in the  
11 air for at least a few weeks during October.  
12 We won't be able to schedule it, I don't  
13 think, until late in October.

14 MR. SCHONMAN: Another concern is,  
15 we have to give the 20 days notice of intent  
16 to take a deposition. So --

17 ADMIN. JUDGE SIPPEL: Not for Mr.  
18 Titus and the expert. Maybe others, but not  
19 to Mr. Titus and the expert. I will prescribe  
20 a date certain.

21 MR. SCHONMAN: Very well.

22 ADMIN. JUDGE SIPPEL: All right.



1 Do you understand what we're talking about,  
2 Mr. Marshall?

3 MR. MARSHALL: I do.

4 ADMIN. JUDGE SIPPEL: Yes. I  
5 mean, forget about that 20-day notice. That's  
6 gone. Once I set dates, the dates are going  
7 to be set. But I'm not going to do it before  
8 October 9, obviously.

9 Now, I'm trying to take this one  
10 step at a time. My managing officer is in the  
11 courtroom. And I'm going to ask Ms. Gosse, do  
12 you have any idea about what might the budget  
13 be like after 1 October?

14 MS. GOSSE: It's put off for at  
15 least six weeks.

16 ADMIN. JUDGE SIPPEL: A continuing  
17 resolution for at least six weeks. Does that  
18 mean that we can't do anything for six weeks?

19 MS. GOSSE: No. We can request  
20 funds needed for a specific purpose.

21 ADMIN. JUDGE SIPPEL: Well, that  
22 means that the Bureau should be able to do the